

charge any of those diminutions, and so giving partial effect to the policy of relief suggested by the Chief Engineer soon after the real nature of the work was understood, and subsequently held out by the Commissioners as a possibility, if not a probability, would still fall far short of paying for the whole construction the price that would have been inevitable had it been carried out as a Government work.

Some of the claimants have furnished us with particulars of expenses incurred by them in supporting their demands before Mr. Shanly and before us, with a request that we should report a liability to reimburse them. We cannot say that there is, strictly speaking, such a liability; but we suggest, for consideration, whether it would not be proper to treat the costs as following the event, and to add to each claim established such a sum for expenses as would follow the recovery of a similar amount in a court of justice.

There are several defences available to the Crown which would have ended our enquiry at the threshold of most of the cases if we had gone no further than to learn that the Government could successfully and legally resist the demand, but we have understood our commission as requiring us not to stop there. The defences alluded to are of different kinds—by statute, by agreement, and by prerogative; and if it was intended, as a rule, to set them up, the certainty with which some one or more of them would defeat almost every claim, even if taken at its full amount, would make it unnecessary to enquire carefully into the particulars of the demand. The issue, therefore, of our commission, gave us the impression that His Excellency the Governor General would use the defences in question, or any of them, if at all, only in such cases as he might, in his discretion, hereafter select. In that view we thought it safer to report our conclusions on the merits of each case, without regard to any of the said defences. The facts elicited might, at all events, help to show which claim, if any, ought to be met with one or more of such defences.

As before mentioned, most of the demands are for work claimed to be outside or independent of the contract. In many instances we have thought them covered by the contract; in some, however, they were not. In these the values of the work would, between man and man, be recoverable, whatever the amount of it might be, but the Statute under which this railway was constructed (31 Vic., cap. 13) has been construed as making a contract which involves an expense of over \$10,000 invalid unless entered into with the sanction of the Governor in Council; and as these extras were furnished almost invariably, not under an Order in Council, but by direction of the Railway Commissioners, or the Chief Engineer, or his subordinates—generally the subordinates—it follows that when the value is over \$10,000 the Crown would not be liable if the said interpretation is correct.

Section 16 of this Act enacts:

“The Commissioners shall build such railway by tender and contract after the plans and specifications therefor shall have been duly advertised, provided that no contract under this section involving an expense of \$10,000 or upwards, shall be concluded by the commissioners until sanctioned by the Governor in Council.

In a case of E. A. Jones, in the Exchequer Court of Canada, Chief Justice Ritchie referred to this section, and gathered from it a declaration by the Legislature that the liability of the Crown, concerning the construction of this railway, is limited to transactions carried out strictly according to the letter of section 16. He says:

“It is obvious, then, that the engineers had no right to dispense with any of the provisions either of the law or the contract, or to make or substitute any contract in lieu thereof, or to involve the Crown in any liability in addition to or outside the contract, and that neither the engineer nor the Commissioners themselves could dispense with any of the provisions of the law. If this or other court undertook to dispense with the certificate of the engineer, the approval of the Commissioners and the sanction of the Governor in Council and adjudged to those suppliants \$124,663 33 a- due from the Crown to them as extras, outside of and beyond the written contract, without tender or contract, or any conditions or sureties for the protection of the public, and without sanction of the Government, it would be simply to set at naught